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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

NO. 73-143

CALLIOPE THEODORIES, widow of PETE PATTERSON, Individually, and as Administratrix of the Succession of Pete Patterson, etc.,
Petitioner

versus

HERCULES NAVIGATION CO., INC.,
(eliminated as defendant)

and

PETERSON MARINE SERVICES, INC.,
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO REVIEW THE DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT
(No. 72-2746)

RESPONDENT'S BRIEF IN OPPOSITION

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and

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- - - - - - - -

BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

Respondent, Peterson Marine Services, Inc., opposes the petition for a writ of certiorari filed herein for the reasons hereinafter set forth.

This is a matter which involves solely (i) a determination made by the United States District Court for the Eastern District of Louisiana, New Orleans Division, to the effect that upon considering all of the evidence, the plaintiff failed to establish any negligence on the part of respondent, Peterson Marine Services, Inc., including its agents, servants and employees (Petitioner's Appendix C, at p. 53), and (ii) affirmation by the Fifth Circuit Court of Appeals under Local

Rule 21, since the Judgment of the District Court was based on findings of fact which were not clearly erroneous and there was no error of law (Petitioner's Appendix D, at p. 56).

Petitioner has not represented, and is unable to represent, to this Court, that the Fifth Circuit Court of Appeals was not justified in finding that the Trial Court's decision was not clearly erroneous. Petitioner, therefore, approaches this case in her petition for certiorari as though she were before the Trial Court and she patently ignores the fact that in a negligence case (and this is purely and simply a negligence case)[1], the Appellate Court does not have the right to examine the record with the idea of deciding the case in the first instance, but rather its obligation is to determine whether or not the findings of fact by the Trial Court were, or were not, clearly erroneous.

The refusal to grant certiorari in this case will not affect other cases, will be of no importance to the public, will present no conflict of opinion and authority between the Circuit Courts of Appeals and will not change in any manner whatsoever the substantive law applicable to the rescue doctrine in maritime

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1/ There is included as Appendix A hereto at pp. 12-21 a copy of the original Complaint which includes the allegations of negligence charged to respondent in Article 10(B). The Fifth Circuit Court of Appeals eliminated the question of "unseaworthiness", but the negligence charges remained throughout.

or other cases. On the contrary, the denial of the application will merely affirm the fact that when a Circuit Court of Appeals finds a situation that fits Local Rule 21 of the Fifth Circuit, a decision based upon the fact will have "no precedential value". A copy of said Local Rule 21 is printed in Appendix B hereto at page 22.

The now sterile judgment referred to on Page 2 of the petition for certiorari was not based upon negligence per se. It was based upon alleged unseaworthiness of a vessel; and the Fifth Circuit Court of Appeals reversed the judgment in its entirety (reported at 448 F.2d 701). As will be noted, the Appellate Court remanded the case to the District Court and, after considering all of the record in the light of the ruling of the Fifth Circuit Court of Appeals, the Trial Judge found that there was no negligence whatsoever on the part of respondent, or anyone for whose actions respondent might have been responsible (Petitioner's Appendix C at p. 53). The Fifth Circuit Court of Appeals found no error in the second judgment and affirmed same (Petitioner's Appendix D at p. 56).

It is respondent's position that this Court's only function in the present instance is to determine whether or not the action of the Fifth Circuit Court of Appeals was right or wrong in disposing of the case under its Local Rule 21, and upon finding that the Trial Court was not clearly erroneous and there was no error of law.

QUESTIONS PRESENTED BY PETITIONER

It is also respondent's position that the alleged "Questions Presented" on Page 3 of petitioner's application are not an appro-

priate basis for granting certiorari in this case, because the Fifth Circuit Court of Appeals did not hold contrary to the established rescue doctrine; nor did it abolish the concept of "respondeat superior" in maritime cases, albeit in any cases; nor did it substitute a rule of "caveat salvator".

Both Courts, at the trial and appellate levels, carefully considered the rescue doctrine and the concept of "respondeat superior", but the Trial Judge held that there was no negligence upon which the rescue doctrine could be applied; and, upon finding a complete absence of negligence on the part of respondent or anyone for whose acts it might have been responsible, the concept of "respondeat superior" became unimportant and inapplicable.

Because of the action taken by the District Judge and the Appellate Court, the obvious answer to both questions presented by petitioner is NO!

COUNTERSTATEMENT OF THE CASE

Respondent does not concur in the statement made by petitioner at page 4 of her petition, to the effect that the essential facts of this case are not in dispute. To the contrary, the only pertinent fact over which there was no serious dispute was that Pete Patterson, the alleged rescuer, died aboard the SS DEMETRIOS on April 5, 1966.

At the time that the Fifth Circuit Court of Appeals reversed the judgment in favor of petitioner by finding that there was no unseaworthiness, Chief Judge John R. Brown commented upon the condition of the record by noting:

> "We find it unnecessary to independently evaluate the extended, confused and frequently conflicting testimony on such questions as who owned the lights (Shipowner and Contractor each claims the other provided them) and whether they remained on at all times (Barrociere testified the lights went out completely, leaving him in total darkness)." See Footnote 4 at 448 F.2d 701 at 703.

In addition, there was a serious dispute on the important question of "proximate cause" and whether or not the alleged rescuer died as a result of a coronary thrombosis which he had suffered approximately eighteen hours before his death. (See Footnote 8, at 448 F.2d 701 at 704).

According to respondent's understanding of the record, the relevant facts are briefly summarized as follows:

The SS DEMETRIOS was in the Port of New Orleans and her holds had to be thoroughly cleaned to permit her to load a cargo of grain. Respondent was engaged by the shipowner to clean the holds. Pursuant to this assignment, respondent used approximately forty workmen and while several of these workmen were in the No. 5 hold, one George Barrociere was assigned the task of holding a portable light. Shortly thereafter Barrociere fell into the hold and suffered severe injuries as a result thereof.

Pete Patterson, the alleged rescuer, was not a member of the crew of the vessel or an employee of respondent, and had no valid reason for being on the SS DEMETRIOS at the time of his death, except that he accompanied his friend, a ship chandler, aboard the vessel when the latter was making

a delivery of ship supplies. The fact that Pete Patterson exerted himself while assisting the ship chandler in delivering the supplies may well have been the sole cause of his demise. There was also a serious factual dispute as to whether or not Pete Patterson actually engaged in the alleged rescue to any extent whatever and, if he did so, whether or not his participation caused his death. Obviously, the Trial Court's ruling, as affirmed by the Fifth Circuit Court of Appeals, answered these questions in the negative, or left them without their need for an answer.

REASONS FOR REFUSING WRIT

This is a simple case involving negligence vel non. The Trial Judge was upheld by the Fifth Circuit Court of Appeals, because it found substantial credible evidence to support the conclusion of the Trial Judge. Consequently, the Appellate Court affirmed under Rule 52(a) of the Federal Rules of Civil Procedure. In doing so, it did not establish a new doctrine, it actually followed the well established jurisprudence relative to the scope of appellate review as enunciated in Cleo Syrup Corp. v. Coca Cola Co., 8 Cir. 1943, 139 F.2d 416, 150 A.L.R. 1056, cert. denied 321 U.S. 781, 64 S.Ct. 638, 88 L.Ed. 1074, in which Judge Sanborn succinctly stated the applicable law as follows:

> "This Court, upon review, will not retry issues of fact or substitute its judgment with respect to such issues for that of the trial court. (Citing Cases). The power of a trial court to decide doubtful issues of fact is not limited to deciding them correctly. (Citing Cases). In a non-jury case, this court may not set aside a finding of fact of a trial court unless there

> is no substantial evidence to sustain it, unless it is against the clear weight of the evidence, or unless it was induced by an erroneous view of the law. (Citing Cases). The District Court, in making its findings was under no misapprehension as to the applicable law. (Citing Cases). In determining whether there is any sufficient evidentiary basis for the court's findings of fact, we must take that view of the evidence and the inferences deducible therefrom which is most favorable to the plaintiff." (Emphasis added).

To the same effect are Mc Allister v. United States, 1954, 348 U.S. 19, 75 S.Ct. 6, 99 L.Ed. 20, 1954 A.M.C. 1999; Lloyd, et al. v. Gill, 5 Cir., 1969, 406 F.2d 585; Standard Dredging Corp. v. Texaco, Inc., 5 Cir., 1968, 395 F.2d 744; Chaney v. City of Galveston, 5 Cir., 1966, 368 F.2d 774; D/S Ove Skou v. Hebert, 5 Cir., 1966, 365 F.2d 341, 1966 A.M.C. 2223; 5A Moore's Federal Practice, Sec. 52.03(1), p. 2613, et seq.

In so holding, the Fifth Circuit also followed the well settled doctrine to the effect that if, from established facts, reasonable men might draw different inferences, appellate courts may not substitute their judgment for that of the trial court. On this subject, there is no conflict among the Appellate Courts, as will be noticed from Manufacturers Casualty Insurance Company, et al v. Intrusion-Prepakt, Incorporated, 5 Cir., 1959, 264 F.2d 758; Federal Security Insurance Company v. Smith, 10 Cir., 1958, 259 F.2d 294.

This is why the Fifth Circuit Court of Appeals decided the case under its own Rule 21, for if it had intended to overrule

established doctrines as represented by petitioner in her petition for certiorari, the Court of Appeals would have issued a full opinion in which it would have either specifically overruled the so-called established rescue doctrine or in differentiating its holding herein from the cases representing the so-called established doctrine.

The Fifth Circuit Court of Appeals reviewed the record of this case on two separate occasions. First, in 448 F.2d 701 (1971), and again in 474 F.2d 1345 (1973). It is highly significant that in her application for rehearing on the first appeal, petitioner herein called upon the Fifth Circuit Court of Appeals to hold respondent negligent, despite the fact that the Court had reversed on the question of "unseaworthiness", citing Reid v. Fargo, 241 U.S. 544, 36 S.Ct. 712, 60 L.Ed. 1156. But the Fifth Circuit refused to so hold, based upon the record that was then before it. The record remained the same and the Trial Judge, West, decided the case on precisely the same record that had been previously made up. The petitioner took the position that Trial Judge West should not admit further evidence, but should decide the case on the record as then constituted, and he complied.

There were also serious factual questions as to the important problem of "proximate cause". In Footnote 8, in 448 F.2d 701, at 704, Chief Judge John R. Brown, upon noting that Pete Patterson's death was not the direct consequence of an unseaworthy condition that necessitated the rescue, nor was it the direct result of any negligence on the part of respondent or any of its employees, and giving petitioner the full value of her argument on "proximate cause",

commented as follows:

> "Viewed from any angle this sort of for-want-of-a-nail-the-shoe-was-lost 'proximate cause' stretches both GRIGSBY logic[2/] and the limits of the English language very, very far, and an audible recitation proves it, for it sounds more than a little strange to say that Patterson's death on the well-lighted main deck was 'caused' by inadequate lighting in hold No. 5."

Petitioner assumes that the record is uncontraverted on the question of the negligence of one of respondent's employees. This is not a fact. The fact is that the Trial Judge completely absolved respondent and its employees from any negligence whatever and the Fifth Circuit Court of Appeals has held that this basic holding was not clearly erroneous.

The Trial Judge and the Appellate Court did not fail to take cognizance of the rescue doctrine. They merely held that there was no negligence on the part of respondent, or of its employees, which would fix liability on respondent by the application of the rescue doctrine, assuming, but by no means admitting, that Pete Patterson was, in fact, a rescuer.

As set forth above, there was a sharp dispute as to whether or not Patterson was, in fact, a rescuer, and, even if he did occupy that status, which is denied, there was a serious dispute as to whether or not

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2/ Referring to Grigsby v. Coastal Marine Service of Texas, Inc., 5 Cir., 1969, 412 F.2d 1011.

he was justified in believing that a sufficent emergency existed to warrant any action on his part, particularly when he knew, or should have known, that he had suffered a heart attack within eighteen hours prior thereto and that respondent was doing everything that could reasonably be done to effect the rescue of Barrociere.

It is singularly strange that petitioner is unable to charge respondent with any negligence, either toward the alleged rescuer or toward the employee who was allegedly being rescued. The sole charge is that the injured employee negligently injured himself, and the evidence shows that if the alleged negligent act occurred (which is specifically denied), it was contrary to specific instructions that had been given to the employee by respondent, his employer.

CONCLUSION

The issue in the present negligence case is one which involves only a well established rule of law applicable to the scope of appellate review of a judgment in an action involving seriously disputed facts and the evidence in support thereof and no amount of rhetoric on the part of petitioner can convert it into one warranting review on certiorari. Because the Trial Judge decided this simple negligence case according to his evaluation of the evidence (by holding that respondent was not guilty of any negligence whatever), and because the Fifth Circuit Court of Appeals found that the Trial Judge was not clearly erroneous in so holding, it is respectfully submitted that the petition for a writ of certiorari should be denied. Such a holding will not establish a novel question in Federal maritime jurisprudence and will not conflict in any way with any prevailing jurisprudence

of this Court, or of the Court of any other state, but will be consistent with all of the pertinent decisions applicable to the matter under consideration.

Respectfully submitted,

C. ELLIS HENICAN
Suite 4440
One Shell Square
New Orleans, Louisiana

ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

I, C. ELLIS HENICAN, Attorney for the respondent in the foregoing Opposition and a member of the Bar of the Supreme Court of the United States, hereby certify that on this day I have served copies of the foregoing Opposition on Harold H. Wedig, Esq. and John M. Coman, Jr., Esq.,by mailing copies thereof, postate prepaid, addressed to their office, on this 14th day of August, 1973.

C. ELLIS HENICAN

APPENDIX A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

CALLIOPE THEODORIES, WIDOW OF PETE PATTERSON, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE SUCCESSION OF PETE PATTERSON (PANAGIOTIS D. PAPADOPOULOS) AND AS NATURAL TUTRIX FOR AND ON BEHALF OF HER MINOR CHILD, DIOGENES P. PAPADOPOULOS (PATTERSON)	:	CIVIL ACTION NUMBER 67-231
PLAINTIFF	:	SECTION G
versus	:	
HERCULES NAVIGATION CO., INC., CARRAS MARITIME CORP., PETERSON MARINE SERVICES, INC., AETNA CASUALTY AND SURETY CO.	:	
DEFENDANTS	:	

COMPLAINT

The complaint of Calliope Theodories Patterson, widow of Pete Patterson, individually and as Natural Tutrix of her minor child, Diogenes Papadopoulos (Patterson), and as Administratrix of the Succession of Pete Patterson, of legal age and a resident of the Parish of Jefferson, State of Louisiana, alleges as follows:

1.

Plaintiff is of the full age of majority, a citizen of the United States of America, and a resident of the Parish of Jefferson,

State of Louisiana, residing at 332 Edinburgh, Metairie, Louisiana.

2.

That plaintiff is the mother of the minor, Diogenes P. Papadopoulos (Patterson) born February 6, 1959, at New Orleans, Louisiana, of the union of plaintiff and her deceased husband, Pete Patterson (Panagiotis D. Papadopoulos); that plaintiff is the duly appointed natural tutrix of the minor aforesaid and duly appointed administratrix of the Succession of Pete Patterson (Panagiotis D. Papadopoulos), both in the Twenty-Fourth Judicial District Court for the Parish of Jefferson, under Docket No. 98-554.

3.

That the defendants herein are:

A. Hercules Navigation Co., Inc., a foreign corporation domiciled in and a resident and citizen of Panama, C.A.,; that it is and was at all pertinent times a non-resident of Louisiana, with no registered agent for the service of process in the State of Louisiana; that it has, by the maintenance of a watercraft on the waterways of the State of Louisiana, at the time of the accident complained of, appointed the Secretary of State of the State of Louisiana its lawful attorney and agent for service of process within the meaning of La. R.S. 13:3479; that notice of service through the Secretary of State of Louisiana is being sent by registered mail to Hercules Navigation Co., Inc., together with a certified copy of the summons and complaint in accordance with La. R. S. 13:3479.

B. Carras Maritime Corporation, 85

Broad Street, New York, New York, a foreign corporation whom plaintiff believes is domiciled in and a resident and citizen of the State of New York; and that it is and was at all pertinent times a non-resident of Louisiana, with no registered agent for the service of process in the State of Louisiana; that it has, by the maintenance of a watercraft on the waterways of the State of Louisiana, at the time of the accident complained of, appointed the Secretary of State of Louisiana its lawful attorney and agent for service of process within the meaning of La. R.S. 13:3479; that notice of service through the Louisiana Secretary of State is being sent by registered mail to Carras Maritime Corporation, together with a certified copy of the summons and complaint in accordance with La. R.S. 13:3479.

C. Peterson Marine Services, Inc., a Louisiana corporation domiciled in and doing business in Orleans Parish, State of Louisiana.

D. Aetna Casualty and Surety Co., a foreign corporation authorized to do and doing business in the State of Louisiana, thus appointing the Louisiana Secretary of State as its registered agent for service of process.

4.

Upon information and belief, plaintiff alleges that at the time of the hereinafter described accident the vessel, DEMETRIOS, was owned, operated or chartered jointly, collectively, or individually by Hercules Navigation Co., Inc., and/or Carras Maritime Corporation, defendants herein.

5.

That on or about April 6, 1966, at approximately 1:00 a.m., Pete Patterson, also formerly known as Panagiotis D. Papadopoulos, husband of plaintiff, died aboard the vessel DEMETRIOS, tied up in navigable waters of the United States alongside the Press Street Wharf in New Orleans, Orleans Parish, Louisiana, as a direct result of the unseaworthiness of the vessel DEMETRIOS, and the carelessness, recklessness and negligence of Peterson Marine Services, Inc., its agents, servants or employees; of Hercules Navigation Co., Inc., its agents, employees and servants; and of Carras Maritime Corp., and its agents, servants and employees; and that defendants are liable to plaintiff and her said minor child, jointly, severally and in solido.

6.

On the night of April 5, 1966, Pete Patterson lawfully went aboard the vessel DEMETRIOS with Captain John Fatsis, owner and operator of Gulf Steamer Supply, to deliver some supplies to said vessel.

7.

That employees of Peterson Marine Services, Inc., were cleaning the hold or holds of said vessel, or were doing some other work upon said vessel.

8.

That George Barrociere, an employee of Peterson Marine Services, Inc., while in the course and scope of his employment, slipped and fell to the bottom of a hold

and was injured.

9.

That Pete Patterson, upon being notified of the accident and injury to George Barrociere, went to the aid of the injured worker; and as a direct result of the excitement and physical exertion of his efforts to rescue George Barrociere, Pete Patterson suffered a sudden coronary failure which resulted in his death before he could be removed from the ship.

10.

That the aforesaid accident and death of Pete Patterson was caused solely or proximately by reason of the unseaworthiness of the vessel DEMETRIOS and the joint and concurrent negligence of Hercules Navigation Co., Inc., Carras Maritime Corp., and Peterson Marine Services, Inc., without any fault whatsoever on the part of the decedent, Pete Patterson. The negligence of said parties is particularized as follows:

A. Hercules Navigation Co., Inc., and Carras Maritime Corp:

(1) The vessel DEMETRIOS was unseaworthy

(2) Failure to warn of danger on the vessel DEMETRIOS

(3) Failure to furnish a safe place to work

(4) Failure to provide adequate lighting

(5) Failure to equip vessel with adequate safety equipment

(6) Lack of competent crew

(7) Failure to adequately supervise crew, and to properly train and instruct them in case of an emergency

(8) Negligently creating a condition of danger to which Pete Patterson was subjected and which caused his death while trying to render aid

(9) Negligently creating a situation of danger or peril to themselves and to others and thereby breaching the duty owed a rescuer of one thereby imperiled.

(10) Other facts of negligence as may be shown at trial hereof.

B. Peterson Marine Services Inc.

(1) Failure to provide adequate lighting

(2) Failure to furnish, maintain or establish a safe place to work

(3) Lack of adequate safety equipment

(4) Failure to adequately supervise inexperienced crew and to properly train and instruct them

(5) Negligently creating a condition of danger to which Pete Patterson was subjected and which caused his death while trying to render aid

(6) Negligently creating a situation of danger or peril to themselves and others and thereby breaching the duty owed a rescuer of one thereby imperiled.

(7) Failure of employees to cease work in improperly lighted areas

(8) Failure to maintain proper caution for one's safety under adverse conditions

(9) Other acts of negligence as may be shown at trial hereof.

11.

Plaintiff alleges, upon information and belief, that prior to and on April 5 and 6, 1966, Aetna Casualty & Surety Co. was the liability insurer of Peterson Marine Services Inc., and their policies of insurance covered liability of the nature herein asserted.

12.

That prior to and on April 5, and 6, 1966, ABC Insurance Co., who, it is alleged on information and belief, is a foreign underwriter, was the liability underwriter of the vessel DEMETRIOS, and their policy or certificates of insurance covered liability of the nature herein asserted. The identity of ABC Insurance Co. has not been revealed to plaintiff despite request upon their local attorneys in New Orleans, Louisiana.

13.

Plaintiff alleges the wrongful death of her husband and the father of the minor,

Diogenes P. Papadopoulos (Patterson), and she asks for damages itemized as follows:

(1)	Conscious pain and suffering of deceased	$20,000.00
(2)	Funeral expenses	650.00
(3)	Loss of parental care, guidance, love, affection, companionship and future support by the minor, Diogenes P. Papadopoulos	150,000.00
(4)	Loss of love, affection, companionship, guidance and future support by Plaintiff, Calliope Patterson	150,000.00
(5)	For the wrongful death of decedent, Pete Patterson	100,000.00
	TOTAL	$420,650.00

14.

All and singular, the premises are true and within the Admiralty and Maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, plaintiff prays that after due proceedings there be judgment herein in favor of petitioner, Calliope Patterson, individually, as Administratrix of the Succession of Pete Patterson, and as Natural Tutrix of her minor child, Diogenes P. Papadopoulos (Patterson), in the amount of Four Hundred Twenty Thousand, Six Hundred Fifty and no/100 Dollars ($420,650.00), and against defendants, Hercules Navigation Co., Inc., Carras Maritime Corp., ABC Insurance

Co., Peterson Marine Services Inc., and Aetna Casualty & Surety Co., with legal interest from judicial demand, and for all costs of this suit.

HAROLD H. WEDIG and JOHN M. COMAN, JR.

BY: S/ Harold H. Wedig
Trial Attorney
700 Maritime Building
New Orleans, La.
Proctors for Plaintiff

Please serve

Peterson Marine Service, Inc.
through its registered agent,
Dean L. Peterson
6323 Cartwright Drive
New Orleans, Louisiana

Hercules Navigation Co. Inc.
Carras Maritime Corp.
Aetna Casualty & Surety Co.
Through
Hon. Wade O. Martin, Jr.
Secretary of State
Baton Rouge, La.

STATE OF LOUISIANA
PARISH OF ORLEANS

BEFORE ME, the undersigned authority, personally came and appeared:

MRS. CALLIOPE THEODORIES PATTERSON, who after being duly sworn did depose and say:

That she is the plaintiff in the foregoing petition; that she has read same and that all the facts and allegations are true and correct to the best of her knowledge.

s/ CALLIOPE T. PATTERSON

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 14th DAY
OF FEBRUARY, 1967.

s/ HAROLD H. WEDIG
NOTARY PUBLIC
not. Pub.

CERTIFICATE

The undersigned, of counsel for plaintiff, certifies that he has this date sent notice by registered mail, along with a copy of the petition and citation, to defendants, Carras Maritime Corp. and Hercules Navigation Co., under the provisions of L.R.S. Title 13, Sec. 3479 and 3480.

New Orleans, Louisiana, Feb. 15th, 1967.

s/ HAROLD H. WEDIG

APPENDIX B

FIFTH CIRCUIT

RULE 21. AFFIRMANCE WITHOUT OPINION

When the court determines that any one or more of the following circumstances exists and is dispositive of a matter submitted to the court for decision: (1) that a judgment of the district court is based on findings of fact which are not clearly erroneous; (2) that the evidence in support of a jury verdict is not insufficient; (3) that the order of an administrative agency is supported by substantial evidence on the record as a whole; (4) that no error of law appears; and the court also determines that an opinion would have no precedential value, the judgment or order may be affirmed or enforced without opinion.

In such case, the court may in its discretion enter either of the following orders: "AFFIRMED. See Local Rule 21," or "ENFORCED. See Local Rule 21."

See N.L.R.B. v. Amalgamated Clothing Workers of America, 5th Cir. 1970, 430 F.2d 966.

Added July 1, 1970.